

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RODNEY GOSS,

Petitioner,

v.

CASE NO: 09-CV-14485-DT

SHERRY BURT,

Respondent.

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
AND DISMISSING THE PETITION FOR WRIT OF HABEAS CORPUS AND
DECLINING TO ISSUE A CERTIFICATE OF APPEALABILITY**

This matter is before the Court on Petitioner Morris Foster's petition for writ of habeas corpus under 28 U.S.C. § 2254. This matter was referred to United States Magistrate Judge Paul J. Komives pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.1. In his report, the Magistrate Judge recommended that this court deny the petition for habeas corpus, deny petitioner a certificate of appealability and the case be dismissed. No objections have been filed pursuant to 28 U.S.C. § 636(b)(1)(C); thus further appeal rights are waived.¹

Having reviewed the file and the Report, the court concludes that the findings and conclusions of the magistrate judge are correct and ADOPTS the same for purposes of this Order.

A petitioner must receive a certificate of appealability ("COA") in order to appeal the denial of a habeas petition for relief from either a state or federal conviction. 28

¹ The failure to object to the magistrate judge's report releases the court from its duty to independently review the motion. *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

U.S.C. §§ 2253(c)(1)(A), (B). A court may issue a COA “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). When a federal district court rejects a habeas claim on the merits, the substantial showing threshold is met if the petitioner demonstrates that reasonable jurists would find the district court’s assessment of the constitutional claim debatable or wrong. See *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). “A petitioner satisfies this standard by demonstrating that . . . jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). In applying this standard, a district court may not conduct a full merits review, but must limit its examination to a threshold inquiry into the underlying merit of the petitioner’s claims. *Id.* at 336-37. The court concludes that jurists of reason would not find the court’s assessment of Petitioner’s claims debatable or wrong. The court thus declines to issue a certificate of appealability.

Accordingly, IT IS ORDERED that, for the reasons set forth in the magistrate judge’s Report and Recommendation, the petition for writ of habeas corpus is DENIED, the court declines to issue a certificate of appealability and the case is DISMISSED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: December 13, 2012

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, December 13, 2012, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522
